

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





# 76-1008

IN THE UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

B  
P/S

UNITED STATES OF AMERICA,  
Appellant

v.

FRANK ALTESE, a/k/a Frankie Feets, et al.,  
Appellee

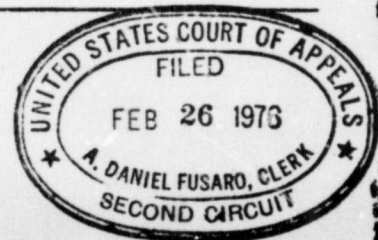
APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

APPENDIX

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Washington, D.C. 20530.



## TABLE OF CONTENTS

Relevant Docket Entries -----	1-5
Indictment -----	6-16
Judge Mishler's Decision dismissing the Section 1962(c) and (d) counts -----	17-27
Judge Bartels Nov. 11 and Dec. 30, 1975 Decisions in <u>United States v. Castellano</u> (75-CR-521) upholding similar Section 1962(c) and (d) counts -----	28-50
Notice of Appeal -----	51



TITLE OF CASE		ATTORNEYS
THE UNITED STATES		ATTORNEYS
VS.		For <del>xxx</del> deft ARRARUMMO:
FRANK AMESE, a/k/a Frankie Forte		Maurice Brill
SAVATORE ARRARUMMO		291 Broadway, NYC.10007
SAVERIO CARRARA, a/k/a Sanny Smash and Sanny		BA 7-6680
MARTIN CASSELLA, a/k/a Motts		Court appd counsel: SIMONELL
JERRY D'AVANZO		Kenneth Raskin
MICHAEL DE LUCA, a/k/a Mikey Junior		5 Hanover Sq. NYC.10004
ANTHONY DI MATTEO, a/k/a Apples		For Defendant: 422-4060
JOHN LOTTERZO, SR., a/k/a Mixed-up Junior		
PASQUALE MACCHIOLE, a/k/a Patty Mack		
BARIO MASCETTI, a/k/a Bari		
ANTHONY MASCUZZO		
JAMES V. NAPOLI, SR., a/k/a Jimmy Nap		
JAMES NAPOLI, JR., a/k/a Junior and Lefty		
FRANK PINTO		
CARLINE PIRONE		
HENRY RADZIEWICZ		
ROCCO RICCARDI, a/k/a Rocky		
KENNETH ROSSI		
EUGENE SCAFIDI, a/k/a Bo and Luigi		
JOSEPH SIMONELLI, a/k/a Joe Black		
SABATO VIGORITO, a/k/a Sal		
ROBERT VOULO, a/k/a the Kid		
DEFENDANTS		

CASH

NAME DE 6-7007

Notice of Appeal

DATE	PROCEEDINGS
5/1/75	Before NEAHER, J. - Indictment filed and ordered sealed by the court bench warrants ordered for 11 defendants
5/7/75	Before MISHLER, CH. J. - Case called- Indictment ordered unsealed by the Court- Deft ANNARUMO present without counsel- bail set at \$50,000.00 P.R. Bond- Pleading set for 5/16/75 at 11:00 A.M.- Deft CARRARA present with counsel-deft arraigned and enters a plea of not guilty- Bail set at \$50,000 P.R. Bond- Deft CASSELLA present without counsel - bail set at \$50,000 P.R. Bond- Pleading set for 5/16/75 at 11:00 A.M.- deft DE LUCA present without counsel - Pleading set for 5/23/75 at 9:30 A.M.- Bail set at \$50,000 P.R. Bond- deft MACCHIOLE and counsel present- deft arraigned and enters a plea of not guilty- Bail set at \$50,000 surety- deft's house as security- Defts NAPOLI SR and NAPOLI JR present with counsel- both defts arraigned and each enter pleas of not guilty-Assignment of counsel set

# 75CR 341

DATE	PROCEEDINGS
	set for 5/15/75 at 11:00 A.M.-Bail set at \$50,000 P.R. Bond for deft Napo Jr. and \$50,000 secured by his home or \$2,500 cash deposit as to deft Na Sr.-Deft PINTO present without counsel -bail set at \$50,000.00 P.R. Bond Pleading set for 5/16/75 at 11:00 A.M. -Deft VIGORITO present without coun <sup>and assignment of counsel</sup> bail set at \$50,000.00 P.R. Bond- Pleading set for 5/16/75 at 11:00 A.M. <sup>and assignment of counsel</sup>
	Pretrial conference set for 8/1/75- Trial set for 8/4/75
5/7/75	Notice of appearance filed(MACCHIOLE)
5/7/75	Notice of appearance filed(CARRARA)
5/8/75	Before MISHLER, CH.J.- Case called- Deft LOTRIENZO present with <sup>out</sup> counsel Bail set at \$50,000 P.R. Bond- Pleading and assignment of counsel adjd 5/23/75 at 9:30 A.M.-Deft ROSSI present without counsel-bail set at \$50,00 P.R.Bond-Pleading and assignment of counsel set for 5/16/75 at 11:00 A.M.
5-14-75	By SCHIFFMAN Mag. - Order for acceptance of cash bail filed (Napoli Sr)
5/16/75	Notice of appearance filed-(ANNARUMO)
5-16-75	Before MISHLER, CH J - case called - deft NAPOLI Sr. present without counsel - court enters a plea of not guilty on his behalf - case adjd to June 6, 1975 for assignment of counsel - deft PINTO present without counsel. Court enters a plea of not guilty on his behalf. Defts ANNARUMO, CASSELLA, NAPOLI Jr & ROSSI present with attys - defts arraigned and each on his own behalf enter pleas of not guilty - pleading as to deft VIGORITO adjd to May 28, 1975 at 9:30 am.
5-16-75	Five (5) Notices of Appearance filed (defts. ANNARUMO, CASSELLA, RADZIEWICZ, ROSSI & NAPOLI JR.)
5-19-75	Before MISHLER, CH J - case called - deft VOULO Present with atty deft arraigned and enters a plea of not guilty - bail set at \$50,000 P/R Bond - case set down for June 6, 1975 for deft to retain/ <sup>new</sup> counsel (VOULO)
5/20/75	Before MISHIER, CH.J.- Case called- Deft MASCUIZZIO and counsel present-De arraigned and enters a plea of not guilty- bail set at \$50,000.00 P.R. Bo Trial set for 8/4/75- Deft PIRONE not present with counsel- Deft MASCITTI present-Court assigned Legal Aid as counsel for deft Mascitti- deft arrai and enters a plea of not guilty- bail set at \$50,000.00 P.R. Bond
5/20/75	Financial affidavit filed (MASCITTI)
5/20/75	Notice of appearance filed (MASCUIZZIO)
5-20-75	Before MISHLER, CH J - case called - at 2:15 PM in the Chambers of Ch.J. Mishler and in the presence of Mr. Fred Barlow, Special Atty and Martin Adler, deputy clerk, the following documents were unsealed: 72-J-1:1A, 1B and 1C; 73-W-1: 1A and 1B; 73-R-1: 1A and 1B; 73-B-3: 3A,3B,3C and 3D.



DATE	PROCEEDINGS
6/17/75	By MISHLER, CH.J.- Orders (4) appointing counsel filed(D'AVANZO, PINTO LOTIERZO and VOULO)
6-19-75	Govts motion to dismiss pre trial motions of deft ROSSI filed.
6-19-75	Before MISHLER, CH J - case called - deft not present - application by AUSA Barlow for a bench warrant as to deft SIMONELLI - bail set at \$50,000 surety company bond = bench warrant ordered for deft SIMONELLI.
6/20/75	Bench warrant issued (SIMONELLI)
6/20/75	Notice of motion for severance filed- ret/ 7/11/75 (PASQUALE MACCHIROLE)
6/20/75	Before MISHLER, CH.J.- Case called- Deft Scafidi and counsel present- court appointed Arnold Walloch as counsel for deft with conditions as indicated on record-
6/20/75	Financial affidavit filed(SCAFIDI)
6/20/75	By MISHLER, CH.J. - Order appointing counsel filed(SCAFIDI)
6/20/75	Notice of appearance filed(PASQUALE MACCHIROLE)
6-30-75	By MISHLER, CH J - Order on stipulation filed that Saxe, Bacon & Bolan, attys for deft Macchirole by Michael Rosen, Esq. that David Abrahamson, M.D. 1085-5th Avenue, NYC. be appointed to examine the deft to determine his physical, emotional & mental condition, etc. and that a report in writing be sent to the court, etc.
7-2-75	Supplemental affidavit filed in support of pre trial motions(defts DeLUCA & LEVIN)
7/8/75	Letter from Richard W. Hannah to chambers and reply of Judge Mishler filed
7/10/75	Notice of motion directing U.S. Atty to make available testing results, dates of intercepted conversations, etc. filed ret. 7/18/75(LOTIERZO)
7/10/75	Letter from Michael Rosen dated 7/8/75 filed
7/11/75	Before MISHLER, CH.J.- Case called- motion for severance adjd to 7/18/7 (PASQUALE MACCHIROLE)
7-16-75	Notice of Motion filed, ret. July 18, 1975, for Discovery, Bill of Particulars, etc.(deft DI MATTEO)
7/18/75	Notice of motion for bill of particulars filed -memorandum of law filed ret. 7/18/75 at 2:00 P.M. (NAPOLI SR)
7-18-75	Before MISHLER, CH J - case called on motion for severance (Macchirole) motion submitted - decision reserved.
7-18-75	Notice of Appearance filed (SALVATORE ANNARUMMO)
7-18-75	Before MISHLER, CH J - case called - deft SCAFIDI & counsel present-deft arraigned and enters a plea of not guilty - bail conditions contd - Pre Trial Conference held as to all defts - motions for discovery were granted and denied in part as indicated on the record - pre trial

## CRIMINAL DOCKET

DATE	PROCEEDINGS
	conference to be contd without date.
7-18-75	Before MISHLER, CH J - case called - motion of deft Frank Altese for Inspection - motion argued - granted and denied in part as indicated on the record.
8-22-75	Govts Memorandum in opposition to motion of deft Napoli, Sr to dismiss Indictment and for Bill of Particulars.
8-25-75	By MISHLER, CH J - Order filed extending travel limits as to deft NAPOLI, Sir. (for leave to travel on August 27, 1975 to Las Vegas, Nevada and to return to his home on Aug. 31, 1975.
9-3-75	Bench Warrant retd and filed - executed (Simonelli)
9-3-75	Before MISHLER, CH J - case called - deft SIMONELLI produced in court on a bench warrant - counsel not present - court to appoint counsel - bail set at \$50,000 P/R Bond - Sept. 5, 1975 at 9:30 am for pleading - Bench Warrant vacated.
9-3-75	Copy of letter filed dated 9-3-75 received from Chambers re appointment of counsel for deft SIMONELLI.
9-3-75	By MISHLER, CH J - Order apptg counsel filed (SIMONELLI)
9/5/75	Before MISHLER, CH J. - Case called - Deft JOSEPH SIMONELLI and counsel present - Deft arraigned and enters a plea of not guilty - bail conditions contd
9/10/75	75 M 1518 is inserted in CR file
10-9-75	By MISHLER, CH J - Order filed that the travel limits established in the Personal Recognizance Bond given by deft James V. Napoli, Sr. on May 8, 1975, are extended to include the Districts of New Jersey, for the purpose of social visits to relatives residing in New Jersey. (two letters filed re Order of Judge received with Order from Chambers)
10-14-75	Defts Reply Memorandum filed (Napoli, Sr)
10-21-75	Notice of Motion filed for Discovery and Bill of Particulars and Affidavit in support thereof (received from Chambers & retd to Chambers)
10-22-75	Appendix filed (received from AUSA Barlow and forwarded to Chambers as directed) to be annexed to Govts memorandum in opposition to deft Napoli's motions etc.
10/23/75	Letter from Max Wild dated 10/23/75 and accompanying copy of request for discovery and inspection filed
10/29/75	Notice of readiness for trial filed
10-31-75	Affidavit in opposition to motion to extend bail limits (James Napoli, Jr.) filed.



DATE	PROCEEDINGS
11/7/75	Before MISHLER, CH.J. Case called- deft and counsel <sup>not</sup> present- motion for permission to travel adjd to 11/21/75 (NAPOLI JR.)
11-14-75	Govts motion to condition discovery filed.
11-17-75	By MISHLER, CH J - Order filed deft James V. Napoli Sr., is given permission to travel on Nov. 18, 1975 to Las Vegas, Nevada and to return to his home on or before Nov. 23, 1975. (order signed 11-14 but received and filed in Clerks Office on 11-17-75)
11/21/75	Before MISHLER, CH.J. - Case called- motion <sup>of deft attese for discovery</sup> adjd to 12/5/75 motion for deft Napoli, Jr. to travel, e.c. argued motion granted on condition s made by court as indicated on record- order to be submitted
1/26/75	By MISHLER, CH.J- Memorandum of Decision and Order filed dismissing counts 1, 2, 6 and 7 of the indictment to all defts named in those counts- motions for additional particulars denied- decision on motions relating to electronic surveillance of defts reserved pending hearing prior to trial- all other motions including requests for leave to make further pre-trial motions are denied
11/28/75	By MISHLER, CH.J. Order filed extending bail limits of deft Napoli Jr. for limited purposes as stated in order
12-5-75	Before MISHLER, CH J - case called - motion to condition discovery - motion argued - discovery granted in part and denied in part as indicated on the record - further pre trial conference set down for 12-19-75 at 4:00 PM.
12-5-75	<del>XXXXXX</del> BY MISHLER, CH J - Memorandum of Decision and Order filed denying motion of gov't requiring disclosure by defts of certain portions of intercepted communication, etc.
12-10-75	Letter filed received from Chambers from AUSA Fred Barlow, Special Attorney (pre trial conference set for Dec. 19, 1975 at 4:00 PM and trial date July 1976, etc.) see letter for details
2/15/75	Govt's bill of particulars filed
2-16-75	Letter filed received from Chambers from Michael Riccardelli re deft Rossi re waiving of rights to Speedy Trial and agrees to have his case tried in July, 1976.
2/16/75	Letter from Marshall Kaplan dated 12/10/75 that deft Robert Vucilo waives right to speedy trial filed
2/16/75	Letter from A.U.S.A. Barlow and accompanying report of Dr. Abrahamsen for
2/19/75	Waiver of speedy trial filed (FRANK PINTO)
10/75	Order of motion re: no further counts filed. (E. S. 10/11)

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v-

FRANK ALTESE, a/k/a Frankie Feets  
SALVATORE ANNARUNO  
SAVERIO CARRARA, a/k/a Sammy Smash and  
Sammy  
MARTIN CASSELLA, a/k/a Motts  
JERRY D'AVANZO  
MICHAEL DE LUCA, a/k/a Mikey Junior  
ANTHONY DI MATTEO, a/k/a Apples  
JOHN LOTIERZO, SR., a/k/a Mixed-up- Junior  
PASQUALE MACCHIOLE, a/k/a Patty Mack  
BARIO MASCITTI, a/k/a Bari  
ANTHONY MASCUZZO  
JAMES V. NAPOLI, SR., a/k/a Jimmy Nap  
JAMES NAPOLI, JR., a/k/a Junior and Lefty  
FRANK PINTO  
CARLINE PIRONE  
HENRY RADZIEWICZ  
ROCCO RICCARDI, a/k/a Rocky  
KENNETH ROSSI  
EUGENE SCAFIDI, a/k/a Bo and Luigi  
JOSEPH SIMONELLI, a/k/a Joe Black  
SABATO VIGORITO, a/k/a Sal  
ROBERT VOULO, a/k/a the Kid

DEFENDANTS

INDICTMENT

Title 18, U.S.C. Sections  
1962, 1963, 1510, 1955, 1952  
2, 371

75CR413  
75CR341



File -  
A2  
75

THE GRAND JURY CHARGES:

COUNT ONE

I. At all times relevant and material to this indictment, the defendants SALVATORE ANNARUNO, MARTIN CASSELLA, JERRY D'AVANZO, MICHAEL DE LUCA, ANTHONY DI MATTEO, JOHN LOTIERZO, SR., PASQUALE MACCHIOLE, BARIO MASCITTI, ANTHONY MASCUZZO, JAMES V. NAPOLI, SR., JAMES NAPOLI, JR., HENRY RADZIEWICZ, EUGENE SCAFIDI, JOSEPH SIMONELLI, SABATO VIGORITO AND ROBERT VOULO and other persons constituted an enterprise within the meaning of Title 18, United States Code, Section 1961 (4), which enterprise engaged in, and the activities of which affected, interstate commerce, in that the said defendants and other persons within the Eastern District of New York and elsewhere, did conduct, finance, manage, supervise, direct and own all and part of an illegal gambling business;

FILE COPY



II. such business (1) having a gross revenue of two thousand dollars (\$2,000) on a single day, (2) remaining in substantially continuous operation in excess of thirty (30) days, (3) involving five persons in its conduct, financing, management, supervision, direction, and ownership, and (4) being in violation of New York Revised Penal Code, Section 225.00 through 225.40 and Title 18, United States Code, Section 1955.

III. From on or about February 26, 1971, up to and including the date of this indictment, within the Eastern District of New York and elsewhere the defendants SALVATORE ANNARUMO, MARTIN CASSELLA, JERRY D'AVANZO, MICHAEL LUCA, ANTHONY DI MATTEO, JOHN LOTIERZO, SR., PASQUALE MACCHIOLE, BAP MASCITTI, ANTHONY MASCEZZIO, JAMES V. NAPOLI, SR., JAMES NAPOLI, JR., HENRY RADZIEWICZ, EUGENE SCAFIDI, JOSEPH SIMONELLI, SABATO VIGORITO AND ROBERT VOULO, being persons employed by and associated with the said enterprise alleged above in paragraphs I and II, unlawfully and knowingly conducted and participated directly and indirectly in the conduct of the said enterprise's affairs through a pattern of racketeering activity and through the collection of unlawful debts, as alleged in paragraphs III A and B:

A. The pattern of racketeering activity included but was not limited to the following acts by the defendants named in these acts, and Counts Three through Seven, inclusive of this indictment (alleged and incorporated herein as acts of racketeering activity by this reference) by the defendants named in the respective Counts:

1. On or about the dates specified, within the Eastern District of New York and elsewhere, the defendants named below unlawfully possessed with knowledge of the contents thereof, writings, papers, instruments and articles of a kind commonly used in the operation, promotion and playing of a policy scheme and enterprise, and constituting, reflecting and representing more than five hundred (500) plays, which was chargeable under Section 225.20 of the New York State Revised Penal Code, and punishable by imprisonment for more than one year:

February 26, 1971: JOHN A. LOTIERZO, SR., and SABATO VIGORITO;

March, 1972 to May, 1972: JERRY D'AVANZO, SALVATORE ANNARUMO, EUGENE SCAFIDI, JOSEPH SIMONELLI and ROBERT VOULO;

September 13, 1972: BARIO MASCITTI, ANTHONY DI MATTEO and  
JOSEPH SIMONELLI;

June 21, 1974: JOSEPH SIMONELLI;

2. On or about the dates specified within the Eastern District of New York and elsewhere, the defendants named, unlawfully and knowingly advanced and profited from unlawful gambling activity by receiving, in connection with a policy scheme and enterprise, money and written records from a person other than a player whose chances and plays were represented by such money and records, and more than five hundred dollars (\$500) in any one day of money played in such scheme and enterprise, which was chargeable under Section 225.10 of the New York State Revised Penal Code, and punishable by imprisonment for more than one year:

April 30, 1973: JAMES V. NAPOLI, SR. and SABATO VIGORITO;

May 7, 1973: JAMES V. NAPOLI, SR., and JAMES NAPOLI, JR.;

May 14, 1973: JAMES V. NAPOLI, SR., JAMES NAPOLI, JR., and  
ANTHONY MASCUZZIO;

June 13, 1973: MICHAEL DE LUCA

B. The collection of unlawful debts, which debts were incurred and contracted in gambling activity, and incurred in connection with the business of gambling, which gambling activity and business of gambling was in violation of Sections 225.00 - 225.40 of the New York State Revised Penal Code, Sections 2A.98, 112 and 121 of New Jersey Statutes Annotated, and Title 18, United States Code, Sections 1955, 2, and 371.

[Title 18, United States Code, Sections 1962(c), 1963, 2]

COUNT TWO

I. From on or about the 26th day of February, 1971, up to and including the date of filing of this indictment, within the Eastern District of New York and elsewhere,

A. the defendants FRANK ALTESE, SALVATORE ANNARUMO, SOVERIO CARRARA, MARTIN CASSELLA, JERRY D'AVANZO, MICHAEL DE LUCA, ANTHONY DI MATTEO, JOHN LOTIERZO, SR., PAQUALE MACCHIOLE, BARIO MASCITTI, ANTHONY MASCUZZIO, JAMES V. NAPOLI, SR., JAMES NAPOLI, JR., FRANK PINTO, CARMINO PIRONE, HENRY RADZIEWICZ, ROCCO RICCARDI, KENNETH ROSSI, EUGENE SCAFIDI, JOSEPH SIMONELLI, SABATO VIGORITO and ROBERT VOULO and



B. Vincent "Lefty" Barbutto, Richard "Shotgun" Bascetta, Vincent Cassese, Arthur Catenacci, Eugene Catenacci, Pasquale Di Sibio, Joseph Dorino, Ralph Ficarella, Francis Folan, Louis "Sonny" Franzese, John "Biggy" Garcia, Samuel Ginsberg, "Giamo", Joseph Giordano, Martin Griffin, Sr., Martin "Buddy" Griffin, Jr., Peter F. Guido, Walter Hines, Joseph Horn, Anthony Intermasso, Maurice Lichtman, Robert "Big Bob" Manse, John "Jumbo" Mascia, Anthony Vincent Napoli, Ray Napolitano, Niel Nastro, Thomas Pecora, Joseph "Doc Pickles" Percella, "Pete", Ernest Pupola, Peter Renda, Joseph Tuseo, Frank Vassallo, Fred Vigorito, Gabriel Vigorito, Robert Vigorito, and Thomas Zito, named herein as co-conspirators but not as defendants,

II. wilfully and knowingly combined, conspired, confederated and agreed together with each other, and with other persons known and unknown to the Grand Jury,

III. to conduct and participate, directly and indirectly, in the conduct of an enterprise engaged in, and the activities of which affected, interstate commerce, through a pattern of racketeering activity and through the collection of unlawful debts, in violation of Title 18, United States Code, Sections 1962(c) and 1963.

IV. It was part of the said conspiracy that the defendants and co-conspirators named above in paragraph I would operate, conceal and profit from a large-scale illegal policy and numbers gambling business.

V. It was part of the said conspiracy that:

A. The unindicted co-conspirators Conrad and other persons known and unknown to the Grand Jury would act as "runners", that is, they would accept policy bets from bettors and players and would enter these bets on "policy slips", that is, writings and papers reflecting said policy bets.

B. The defendants SALVATORE ANNARUNDO and ANTHONY MASCUZZIO, the unindicted co-conspirators John E. Garcia, Peter F. Guido and other persons known and unknown to the Grand Jury would act as controllers; that is, they would receive directly and indirectly policy slips from runners and accumulate the policy slips in "bundles", that is, policy slips relating to each controller's runners.

C. The defendants JERRY D'AVANZO, ANTHONY DI MATTEO, BARIO MASCITTI, JOSEPH SIMONELLI, JOHN LOTIERZO, SR., SABATO VIGORITO, FRANK ALTESE, FRANK PINTO, CARMINO PIRONE, EUGENE SCAFIDI and ROBERT VOULO, the unindicted co-conspirators, Charles Gaudio and John Lotierzo, Jr. and other persons known and unknown to the Grand Jury would operate policy "banks" and "offices", that is, they would receive directly and indirectly from controllers the bundles of policy slips relating to the controller's runners, and would prepare "ribbons", that is, writings and papers reflecting the "hits", or winning numbers, and the "handle", or total bets, for each controller and runner, and would also prepare "master sheets", that is, writings and papers reflecting the amount of money owed to the policy gambling organization by controllers, and the amounts of money to be paid to or collected from runners by controllers.

D. The defendants JAMES V. NAPOLI, SR., JAMES NAPOLI, JR., MARTIN CASSELLA, MICHAEL DE LUCA, SAVERIO CARRARA, SABATO VIGORITO and PASQUALE MACCHITOLE would finance, supervise, direct and manage controllers, runners, bank and office workers and others.

VI. Among the means by which the aims and purposes of the said conspiracy were effected and its existence was concealed, were the following:

A. The defendant JAMES V. NAPOLI, SR. and others would finance and extend credit to controllers, and decide the percentage of the daily gross receipts and salaries to be paid to controllers, bank and office workers, and others.

B. The amount of money owed by controllers would be calculated regularly by defendants and co-conspirators in policy banks and offices and entered on records showing credit balances.

C. Controllers and runners would be denoted by code names such as "AA" and "XX" and code numbers such as "R 91" and "R 92" on policy slips, ribbons, master sheets and other records.

D. The locations of policy banks and offices would be changed regularly in order to hinder investigation by law enforcement officers.

E. Police officers unknown to the Grand Jury would be paid in order to hinder investigations and arrests.



F. Telephones would be used sparingly, and the interior of the HiWay Lounge, 362 Metropolitan Avenue, Brooklyn, New York, would be inspected, to hinder electronic surveillance by law enforcement officers.

G. The HiWay Lounge would be used by the defendant JAMES V. NAPOLI, SR. and others, to meet and discuss the operation of the said illegal policy gambling business.

[Title 18, United States Code, Section 1962(d)]

COUNT THREE

From in or about March, 1972, to in or about July, 1972, within the Eastern District of New York, the defendants SALVATORE ANNARUMO, JERRY D'AVANZO, EUGENE SCAFIDI and ROBERT VOULO and other persons known and unknown to the Grand Jury, unlawfully, knowingly and wilfully conducted, managed, supervised and directed an illegal gambling business, such business (1) having a gross revenue of two thousand dollars (\$2,000) on a single day, (2) remaining in substantially continuous operation in excess of thirty (30) days, (3) involving five persons in its conduct, financing, management, supervision, direction and ownership, and (4) being in violation of New York Revised Penal Code, Sections 225.00 through 225.40.

[Title 18, United States Code, Sections 1955 and 2]

COUNT FOUR

From on or about December 13, 1972 to on or about March 9, 1973, within the Eastern District of New York, the defendants ANTHONY DI MATTEO, BARIO MASCITTI, ROCCO RICCARDI, EUGENE SCAFIDI and ROBERT VOULO unlawfully, knowingly and wilfully conducted, managed, supervised and directed an illegal gambling business, such business (1) having a gross revenue of two thousand dollars (\$2,000) on a single day, (2) remaining in substantially continuous operation in excess of thirty (30) days, (3) involving five persons in its conduct, financing, management, supervision, direction and ownership, and (4) being in violation of New York Revised Penal Code, Sections 225.00 through 225.40.

[Title 18, United States Code, Sections 1955 and 2]

COUNT FIVE

From on or about April 13, 1973, to on or about June 15, 1973, within the Eastern District of New York and elsewhere, the defendants SALVATORE ANNARUMO, SAVERIO CARRARA, MARTIN CASSELLA, MICHAEL DE LUCA, ANTHONY DI MATTEO, JOHN LOTIERZO, SR., PASQUALE MACCHIOLE, BARIO MASCITTI, ANTHONY MASCUZZIO, JAMES V. NAPOLI, SR., JAMES NAPOLI, JR., HENRY RADZIEWICZ, SABATO VIGORITO and ROBERT VOULO unlawfully, knowingly and wilfully conducted, financed, managed, directed, supervised and owned all and part of an illegal gambling business, such business (1) having a gross revenue of two thousand dollars (\$2,000) on a single day, (2) remaining a substantially continuous operation in excess of thirty (30) days, (3) involving five persons in its conduct, financing, management, supervision, direction and ownership, and (4) being in violation of New York Revised Penal Code, Sections 225.00 through 225.40.

[Title 18, United States Code, Sections 1955 and 2]

COUNT SIX

From on or about January 1, 1973 to on or about June 15, 1973, the defendants MARTIN CASSELLA, PASQUALE MACCHIOLE, JAMES V. NAPOLI, SR. and HENRY RADZIEWICZ traveled in interstate commerce, that is, from the State of New Jersey to the State of New York, with the intent to distribute the profits of an unlawful activity, and to promote, manage, establish, carry on, and facilitate the promotion, management, establishment and carrying on of an unlawful activity, the said unlawful activity being business enterprise involving gambling in violation of the New York Revised Penal Code, Sections 225.00 - 225.40 and Title 18, United States Code, Section 1955.

[Title 18, United States Code, Sections 1952 and 2]

COUNT SEVEN

From on or about May 8, 1973 to on or about September 13, 1973, within the Eastern District of New York, the defendants PASQUALE MACCHIOLE and JAMES V. NAPOLI, SR., by means of intimidation and threats of force wilfully endeavored to obstruct, delay and prevent Richard Bascetta and others from communicating information relating to a violation of a criminal statute of the



United States, that is, Title 18, United States Code, Section 1955, to Special Agent Robert B. Liesegang and other Special Agents of the Federal Bureau of Investigation, United States Department of Justice, duly authorized by said Department, to conduct and engage in investigations of violations of said statute, who were then conducting and engaging in such an investigation.

[Title 18, United States Code, Sections 1510 and 2]

COUNT EIGHT

I. From on or about February 26, 1971, up to and including the date of this indictment, within the Eastern District of New York and elsewhere, the defendants FRANK ALTESE, SALVATORE ANNARUNO, SAVERIO CARRARA, MARTIN CASSELLA, JERRY D'AVANZO, MICHAEL DE LUCA, ANTHONY DI MATTEO, JOHN LOTIERZO, SR., PASQUALE MACCHIROLE, BARIO MASCITTI, ANTHONY MASCUZZIO, JAMES V. NAPOLI, SR., JAMES NAPOLI, JR., FRANK PINTO, CARMINE PIRONE, HENRY RADZIEWICZ, ROCCO RICCARDI, KENNETH ROSSI, EUGENE SCAFIDI, JOSEPH SIMONELLI, SABATO VIGORITO and ROBERT VOULO conspired, agreed and confederated together with each other, and with the persons named in Count Two paragraph I B, named herein as co-conspirators, but not indicted, and with other persons known and unknown to the Grand Jury, to conduct, finance, manage, direct, supervise and own all and part of an illegal gambling business, in violation of Title 18, United States Code, Section 1955, and to travel in interstate commerce with the intent to distribute the profits of an unlawful activity, and to promote, manage, establish, carry on, and facilitate the promotion, management, establishment and carrying on of an unlawful activity, the said unlawful activity being a business enterprise involving gambling, in violation of Title 18, United States Code, Section 1952.

II. Paragraphs IV, V, and VI of Count Two are incorporated and realleged herein by this reference.

III. In furtherance of the said conspiracy, and to effect its purposes, the defendants performed the following overt acts:

A. On or about May 1, 1972, the defendants EUGENE SCAFIDI and ROBERT VOULO possessed gambling records, within the Eastern District of New York.

United States, that is, Title 18, United States Code, Section 1955, to Special Agent Robert B. Liesegang and other Special Agents of the Federal Bureau of Investigation, United States Department of Justice, duly authorized by said Department, to conduct and engage in investigations of violations of said statute, who were then conducting and engaging in such an investigation.

[Title 18, United States Code, Sections 1510 and 2]

COUNT EIGHT

I. From on or about February 26, 1971, up to and including the date of this indictment, within the Eastern District of New York and elsewhere, the defendants FRANK ALTESE, SALVATORE ANNARUMO, SAVERIO CARRARA, MARTIN CASSELLA, JERRY D'AVANZO, MICHAEL DE LUCA, ANTHONY DI MATTEO, JOHN LOTIERZO, SR., PASQUALE MACCHIROLE, BARIO MASCITTI, ANTHONY MASCUZZIO, JAMES V. NAPOLI, SR., JAMES NAPOLI, JR., FRANK PINTO, CARMINE PIRONE, HENRY RADZIEWICZ, BOCCO RICCARDI, KENNETH ROSSI, EUGENE SCAFIDI, JOSEPH SIMONELLI, SABATO VICCRITO and ROBERT VOULO conspired, agreed and confederated together with each other, and with the persons named in Count Two paragraph I B, named herein as co-conspirators, but not indicted, and with other persons known and unknown to the Grand Jury, to conduct, finance, manage, direct, supervise and own all and part of an illegal gambling business, in violation of Title 18, United States Code, Section 1955, and to travel in interstate commerce with the intent to distribute the profits of an unlawful activity, and to promote, manage, establish, carry on, and facilitate the promotion, management, establishment and carrying on of an unlawful activity, the said unlawful activity being a business enterprise involving gambling, in violation of Title 18, United States Code, Section 1952.

II. Paragraphs IV, V, and VI of Count Two are incorporated and realleged herein by this reference.

III. In furtherance of the said conspiracy, and to effect its purposes, the defendants performed the following overt acts:

A. On or about May 1, 1972, the defendants EUGENE SCAFIDI and ROBERT VOULO possessed gambling records, within the Eastern District of New York.



B. On or about January 23, 1973, within the Southern District of New York, the defendants JAMES NAPOLI, JR., MARTIN CASSELLA, and HENRY RADZIELEWICZ met with the defendant JAMES V. NAPOLI, SR.

C. On or about May 11, 1973, within the Eastern District of New York, the defendants ANTHONY DI MATTEO, BARIO MASCITTI and ROBERT VOULO, met with the defendants JAMES V. NAPOLI, SR., and MICHAEL DE LUCA.

D. On or about May 14, 1973, the defendant JAMES NAPOLI, SR. met with the defendants ANTHONY MASCUZZIO, PASQUALE MACCHIOLE, JAMES NAPOLI, JR. and SABATO VIGORITO, within the Eastern District of New York.

E. On or about June 21, 1974, the defendant JOSEF SIMONELLI possessed policy gambling records, within the Eastern District of New York.

F. On or about March 24, 1975, the defendants FRANK ALTESE and CARMINE PIROME possessed policy gambling records, within the Eastern District of New York.

[Title 18, United States Code, Section 371]

A TRUE BILL

\_\_\_\_\_  
FOREMAN

\_\_\_\_\_  
DAVID G. TRAGER  
UNITED STATES ATTORNEY  
EASTERN DISTRICT OF NEW YORK

B. On or about January 23, 1973, within the Southern District of New York, the defendants JAMES NAPOLI, JR., MARTIN CASSELLA, and HENRY RADZIEWICZ met with the defendant JAMES V. NAPOLI, SR.

C. On or about May 11, 1973, within the Eastern District of New York, the defendants ANTHONY DI MATTEO, BARIO MASCITTI and ROBERT VOULO, met with the defendants JAMES V. NAPOLI, SR., and MICHAEL DE LUCA.

D. On or about May 14, 1973, the defendant JAMES NAPOLI, SR. met with the defendants ANTHONY MASCUZZO, PASQUALE MACCHIROLE, JAMES NAPOLI, JR. and SABATO VIGORITO, within the Eastern District of New York.

E. On or about June 21, 1974, the defendant JOSEPH SIMONELLI possessed policy gambling records, within the Eastern District of New York.

F. On or about March 24, 1975, the defendants FRANK ALTESE and CARMINE PIRONE possessed policy gambling records, within the Eastern District of New York.

[Title 18, United States Code, Section 371]

A TRUE BILL

\_\_\_\_\_  
FOREMAN

\_\_\_\_\_  
DAVID G. TRAGER  
UNITED STATES ATTORNEY  
EASTERN DISTRICT OF NEW YORK



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK  
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75 CR 341

UNITED STATES OF AMERICA

-against-

Memorandum of Decision  
and Order

FRANK ALTESE, et al.,

Defendants.

November 26, 1975

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MISHLER, CH. J.

The twenty-two defendants in this action were variously indicted on eight counts relating to alleged illegal gambling operations in violation of the Organized Crime Control Act of 1970. Sixteen of the defendants<sup>/1</sup> are charged in count one with violations of 18 U.S.C. §1962(c).<sup>/2</sup> All of the defendants<sup>/3</sup> are charged in count two with conspiracy under 18 U.S.C. §1962(d) to violate §1961(c). Counts three, four, and five charge sixteen of the defendants<sup>/4</sup> with violations of 18

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<sup>/1</sup> Salvatore Annarumo, Martin Cassella, Jerry D'Avanzo, Michael DeLuca, Anthony DiMatteo, John Lotierzo, Pasquale Macchirole, Bario Mascitti, Anthony Mascuzzio, James V. Napoli, Sr., James Napoli, Jr., Henry Radziewicz, Eugene Scafidi, Joseph Simonelli, Samata Vigorito and Robert Voulo.

<sup>/2</sup> Section 1962. Prohibited activities

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activities or collection of unlawful debt.

<sup>/3</sup> Frank Altese, Salvatore Annarumo, Saverio Carrara, Martin Cassella, Jerry D'Avanzo, Michael DeLuca, Anthony DiMatteo, John Lotierzo, Pasquale Macchirole, Bario Mascitti, Anthony Mascuzzio, James V. Napoli, Sr., James Napoli, Jr., Frank Pinto, Carmine Pirone, Henry Radziewicz, Rocco Riccardi, Kenneth Rossi, Eugene Scafidi, Joseph Simonelli, Samata Vigorito and Robert Voulo.

<sup>/4</sup> Count three: Salvatore Annarumo, Jerry D'Avanzo, Eugene Scafidi and (footnote 4 continued on page 2)

U.S.C. §1955, which makes a gambling business which is illegal under state law also illegal under federal law if such a business involves five or more persons and has been in substantially continuous operation for over thirty days with gross revenues of \$2,000 in any single day. Four of the defendants<sup>/5</sup> are charged in count six with violations of 18 U.S.C. §1952.<sup>/6</sup> Count seven charges two of the defendants<sup>/7</sup> with violation of 18 U.S.C. §1510.<sup>/8</sup> All of the defendants<sup>/9</sup> are charged in count eight

<sup>/4</sup> continued:

Robert Voulo. Count four: Anthony DiMatteo, Bario Mascitti, Rocco Riccardi, Eugene Scafidi and Robert Voulo. Count five: Salvatore Annarumo, Saverio Carrara, Martin Cassella, Michael DeLuca, Anthony DiMatteo, John Lotierzo, Sr., Pasquale Macchirole, Bario Mascitti, Anthony Marcuzzio, James V. Napoli, Sr., James Napoli, Jr., Henry Radziewicz, Sabato Vigorito and Robert Voulo.

<sup>/5</sup> Martin Cassella, Pasquale Macchirole, James V. Napoli, Sr., and Henry Radziewicz.

<sup>/6</sup> §1952. Interstate and foreign travel or transportation in aid of racketeering enterprises.

(a) Whoever travels in interstate or foreign commerce or uses any facility in interstate or foreign commerce, including the mail, with intent to—

- (1) distribute the proceeds of any unlawful activity; or
- (2) commit any crime of violence to further any unlawful activity; or
- (3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on of any unlawful activity

and thereafter performs or attempts to perform any of the acts specified in subparagraphs (1), (2) and (3), shall be fined not more than \$10,000 or imprisoned for not more than five years, or both.

<sup>/7</sup> Pasquale Macchirole and James V. Napoli, Sr.

<sup>/8</sup> §1510. Obstruction of criminal investigations

(a) whoever willfully endeavors by means of bribery, misrepresentation, intimidation, or force or threats thereof to obstruct, delay, or prevent the communication of information relating to a violation of any criminal statute of the United

(footnotes 8 and 9 continued on page 3)



with engaging in a conspiracy under 18 U.S.C. §371 to violate 18 U.S.C. §§1951 and 1955.

Several defendants have made motions relating to the sufficiency of the indictment, demands for bills of particulars and requests for discovery.

#### DISMISSAL OF THE INDICTMENT

Counts one and two of the indictment are dismissed as to all defendants. Those counts are based on alleged violations of Title IX of the Organized Crime Control Act of 1970, 18 U.S.C. §1962. Title IX deals with the problem of infiltration of legitimate business by persons connected with organized crime. There is no allegation in this indictment concerning infiltration of legitimate businesses. It is clear from a reading of the statute and from the legislative history that Congress did not intend for §1962 to cover the type of activity charged in this indictment.

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8 continued:

States by any person to a criminal investigator; or

Whoever injures any person in his person or property on account of the giving of such person or by any other person of any such information to any criminal investigator—

Shall be fined not more than \$5,000, or imprisoned not more than five years, or both.

(b) As used in this section, the term "criminal investigator" means any individual duly authorized by a department, agency, or armed force of the United States to conduct or engage in investigations of or prosecutions for violations of the criminal laws of the United States

9 Supra, note 3.

The House Report on the Organized Crime Control Act of 1970 clearly indicates the narrow purpose of §1962. In a section-by-section analysis of the law the House Report states that §1962 (a), (b), and (c) "establishes a threefold prohibition aimed at stopping the infiltration of racketeers into legitimate organizations." House Report No. 91-1549, 2 U.S. Code Cong. & Ad. News 4007, 4033 (1970).

The Senate Report on Title IX emphatically stated that the purpose of §1962 is "the elimination of the infiltration of organized crime and racketeering into legitimate organizations operating in interstate commerce." S. Rep. No. 617, 91st Cong. 1st Sess. 76 (1969). There is no indication in any of the legislative documents that this statute has a purpose or scope broader than that indicated above.

Illegal gambling businesses are covered by another title of the same law. Title VII, 18 U.S.C. §1955, relates specifically to the prohibition of illegal gambling operations. The activities with which the defendants are charged are covered by §1955. Indeed, counts three and four of the indictment are based on that section. A common sense reading of the legislative documents dictates a finding that Congress did not adopt two laws which cover the identical crimes.

The government cites United States v. Cappetto, 502 F.2d 1351 (7th Cir. 1974), cert. denied, 420 U.S. 925 (1975), in support of its position that §1962 covers illegal gambling businesses. Cappetto was an appeal from the issuance of a default order and a contempt order and from the granting of a preliminary injunction prohibiting the defendants from engaging in further gambling activities. In order to



support its conclusion that §1962 was intended to cover actual racketeering itself, without regard to any infiltration of legitimate businesses, the court erroneously cited legislative language which was intended to explain §1955, not §1962. 502 F.2d at 1358.

As the only other support for its position the Seven Circuit cited a Second Circuit case, United States v. Parness, 503 F. 2d 430 (2d Cir. 1974). as authority for a broad definition of "enterprise" as used in §1962. Parness merely held that "enterprise" should be construed to include foreign as well as domestic businesses. 503 F. at 439. That case did not consider whether "enterprise," as used in §1962, includes illegal as well as legitimate business operations. This court declines to follow Cappetto.

The government cites United States v. Castellano, No. 75 CR 521 (E.D.N.Y. Nov. 11, 1975—unreported) in support of its position. That decision relied primarily on Cappetto, supra. It is the opinion of this writer that the better view was expressed in United States v. Amato, 367 F. Supp. 547 (S.D.N.Y. 1973), which held that §1962 "makes it unlawful to invest the proceeds of racketeering in legitimate business, and §1962(d) makes it unlawful for any person to conspire to violate any provisions of §1962." 367 F. Supp. at 549.

Contrary to the government's contention that legislative history should not be the crucial factor in interpreting this statute, the court must look to the legislative history for statutory interpretation in the absence of significant case law. See, e.g., Muniz v. Hoffman, \_\_\_ U.S. \_\_\_, 95 S.Ct. 2178, 2187 (1975); Philbrook v.

Glodgett, \_\_\_ U.S. \_\_\_, 95 S.Ct. 1893, 1898 (1975); United States v. National Marine Engineers Beneficial Assn., 294 F.2d 385, 391 (2d Cir. 1961). As already noted, the relevant legislative reports indicate conclusively that §1962 was intended to deal only with the very specific problem of infiltration of legitimate businesses by persons connected with organized crime. Therefore, counts one and two must be dismissed as to all defendants named in those counts,<sup>/10</sup> because of a failure to allege an essential element of an offense under §1962(c); that is, the conducting of a legitimate business enterprise through a pattern of racketeering.

Defendant James V. Napoli, Sr., has moved for the dismissal of counts six and seven for failure to allege essential elements of the offenses charged. Dismissal of both counts is not opposed by the government. For the reasons set forth below, counts six and seven are dismissed as to all defendants named in those counts.

Count six alleges a violation of 18 U.S.C. §1952,<sup>/11</sup> prohibiting interstate travel for the purpose of performing certain illegal acts and the subsequent performance of such an act. The indictment fails to allege the essential element of actual performance of an illegal act. Therefore, count six must be dismissed as to all defendants named in the count.<sup>/12</sup>

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<sup>/10</sup>

Count one: Supra, note 1.  
Count two: Supra, note 3.

<sup>/11</sup>

Supra, note 6.

<sup>/12</sup>

Supra, note 5.



Count seven charges defendants James V. Napoli, Sr., and Pasquale Macchirole with violations of 18 U.S.C. §1510,<sup>/13</sup> which prohibits the use of intimidation and threats of force to obstruct, delay or prevent an individual from communicating with a criminal investigator. The count fails to allege that the defendants knew that the attempted communication was with a criminal investigator. Because that essential element of the offense is not pleaded, count seven must be dismissed as to James V. Napoli, Sr., and Pasquale Macchirole, the only defendants named in the count.

#### BILL OF PARTICULARS

Several defendants have made demands on the government for extensive bills of particulars. The government in turn has provided certain particulars to each defendant.

Rule 7(f) of the Federal Rules of Criminal Procedure permits a court to direct the filing of bills of particulars. The principal purpose of a bill of particulars is to enable the accused to prepare for trial and to prevent prejudicial surprise. "A bill of particulars is normally ordered by a trial judge . . . to supplement an indictment cast in general terms. However, a judge is not required to grant such an order. Whether a bill of particulars should be provided at all, its scope and specificity, if permitted, . . . are all matters left primarily within the discretion of the trial judge." United States v. Salazar, 485 F.2d 1272 (2d Cir. 1973).

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<sup>/13</sup>  
Supra, note 8.

In the present action, the counts which remain in the indictment are adequately pleaded and they satisfactorily apprise the defendants of the charges against them. The particulars voluntarily offered by the government are sufficient and the government properly refused the defendants' other demands which relate to evidentiary facts which are not the proper subject of a bill of particulars, except in instances where the evidentiary facts are necessary to enable the defendant to prepare his defense.

#### DISCOVERY

Several defendants have made motions for discovery. The government has complied with most of the discovery requests. Those matters which are still in dispute involve information to which the defendants are not entitled at this time.

Discovery is governed by Rule 16 of the Federal Rules of Criminal Procedure. All of the information subject to disclosure under Rule 16 has been offered to the defendants by the government, according to the papers filed with the court.

The materials requested, to which the defendants are not now entitled, relate generally to statements made to the government or the grand jury by someone other than the particular defendant requesting the statement. Unless such statements are exculpatory, they are not required to be disclosed at this stage of a criminal proceeding. Brady v. Maryland, 373 U.S. 93, 83 S.Ct. 1194 (1963).

Several defendants have moved for protective orders to prevent disclosure to third parties of material provided to individual



defendants. Such a protective order will be issued as to discoverable material concerning post conspiratorial statements.

#### OTHER MOTIONS

Defendant James V. Napoli, Sr., has made several additional motions, some of which are mooted by the dismissal of counts one, two, six and seven. There are several motions, however, which are appropriate for decision.

Napoli contends that the presence of special attorneys from the Department of Justice, Organized Crime Strike Force, during presentations before the grand jury violated Rule 7(d) of the Federal Rules of Criminal Procedure. Napoli concedes that the Second Circuit has recently held that the presence of government attorneys during grand jury presentations is not a violation of the secrecy requirement of Rule 6(d). In re Grand Jury Subpoena of Alphonse Persico, Docket No. 75-1020 (2d Cir. decided June 19, 1975). Accordingly, the motion to dismiss the indictment based on the alleged violations of Rule 6(d) is denied.

Another motion requests a hearing to determine the extent of improper disclosures of grand jury testimony by the government. The defendant has failed to cite authority for a dismissal of the indictment based on the type of improper disclosures alleged in movant's papers. Therefore, in the absence of a showing of any possible prejudice to the defendants, the motion for a hearing is denied.

The motion for disclosure of the names, addresses and other information concerning the individual members of the grand jury

has been previously denied by this court. However, the defendants should be provided with a list of dates on which evidence concerning this indictment was presented. Additionally, the Clerk of this Court is directed to permit inspection by the defendants of the "concurrence slip" filed with this indictment.

Defendant Napoli, Sr., has moved for a severance of his trial from that of the other defendants, and severance of the conspiracy count from the alleged substantive violations. Rule 14, F.R.Crim.P., permits the court to grant a severance if it appears that the government or defendants will be prejudiced by a joint trial. There has been no showing that the defendants will be in any way prejudiced by a joint trial on all counts. The motion for a severance is denied.

Several defendants have requested leave to make further motions as appropriate. Counsel for all parties have had sufficient time to make appropriate pre-trial motions. Leave to make further motions is denied, except as to suppression motions related to electronic surveillance.

#### CONCLUSION

Counts one, two, six and seven of the indictment are dismissed as to all defendants named in those counts.

All motions for additional particulars are denied.

The government is directed to supply each defendant with a list of dates on which evidence was presented to the grand jury concerning this indictment and is further directed to provide each defendant with the opportunity to inspect the "concurrence slip" filed

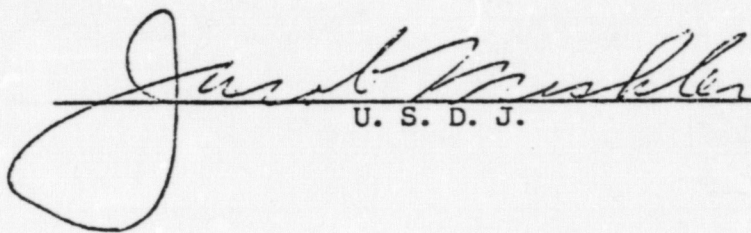


with this indictment.

Decision on motions relating to electronic surveillance of the defendants is reserved pending a hearing prior to trial.

All other motions, including requests for leave to make further pre-trial motions, are denied, and it is

SO ORDERED.

  
U. S. D. J.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
UNITED STATES OF AMERICA :

-against- :

PAUL CASTELLANO, a/k/a "Big Paul", :  
PAUL F. CASTELLANO, a/k/a "Little Paul", :  
ANGELO SCARPULLA, :  
FRANK GUGLIELMINI, :  
JOSEPH CASTELLANO, :  
FRANK GRANATO, :  
ROBERT HERKO, :  
VICTOR LI PARI and :  
ROBERT DE PRIZIO, :

75-CR-521

Defendants. :

-----X  
Appearances:

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Eastern District of New York  
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Attorney-in-Charge

Organized Crime Section

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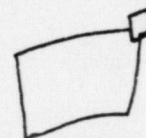
Special Attorney, U.S. Department of Justice

Organized Crime and Racketeering Field Office

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JOHN P. DORAN, ESQ.  
Attorney for Defendant Robert De Prizio  
75 Montgomery Street  
Jersey City, New Jersey

BARTELS, District Judge

This fourteen-count indictment charges in count one all nine defendants, Paul Castellano, Paul F. Castellano, Angelo Scarpulla, Frank Guglielmini, Joseph Castellano, Frank Granato, Robert Herko, Victor Li Pari and Robert De Prizio, with conspiracy to violate 18 U.S.C. §1962(c) in violation of 18 U.S.C. §1962(d), and charges in count two defendants Paul Castellano, Paul F. Castellano, Scarpulla and Joseph Castellano with actual violation of §1962(c). The charges in both counts are predicated upon an alleged association of the defendants with a group of individuals, including the defendants, engaged in loaning money at usurious interest rates and collecting unlawful debts, the activities of which affected interstate commerce.

All defendants have joined in a motion (1) to dismiss counts one and two of the indictment on the ground that the acts alleged therein do not constitute a violation of 18 U.S.C. §1962, or, in the alternative, that if the statute is applicable to the facts alleged in the indictment, §1962 is unconstitutional since it fails to give fair notice of prohibited conduct, and (2) for severance of counts three



through fourteen on the ground that joinder is prejudicial.

I

Defendants contend that 18 U.S.C. §1962(c) is specifically directed to the infiltration of racketeers into a legitimate enterprise and not an illegitimate one such as extending credit at usurious interest rates as charged in the indictment, and hence is not applicable to the facts alleged in the indictment. In support of their position defendants cite numerous portions of House and Senate Committee reports and cases which speak in terms of infiltration of a legitimate business. See e.g., 1970 U.S. Code Cong. & Adm. News 4033; United States v. Amato, 367 F.Supp. 547,549 (S.D.N.Y. 1973). In opposition the Government contends that the plain meaning of the statute includes illegitimate as well as legitimate enterprises.

[ Section 1962(c) of Title 18 of the United States Code was enacted as part of the Organized Crime Control Act of 1970, P.L. 91-452, 84 Stat. 922, 1970 U.S. Code Cong. & Adm. News 1073, and provides that:

"It shall be unlawful for any person employed by or associated with any enterprise engaged in, or

the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt."

The basic purpose of the Organized Crime Control Act of 1970 was "to seek the eradication of organized crime in the United States by strengthening the legal tools in the evidence-gathering process, by establishing new penal prohibitions, and by providing enhanced sanctions and new remedies to deal with the unlawful activities of those engaged in organized crime." 1970 U.S. Code Cong. & Adm. News 1073. See also, Iannelli v. United States, 95 S.Ct. 1284, 1294 (1975). In addition to prohibiting the conduct or participation in an enterprise's affairs as provided in §1962(c), Congress proscribed the use of money derived from racketeering activities for the purpose of acquiring an interest or control in an enterprise [18 U.S.C. §1962(a)], the acquiring of an interest or control in an enterprise through a pattern of racketeering or through the collection of an unlawful debt [18 U.S.C. §1962(b)], and conspiracy to commit any of the above [18 U.S.C. §1962(d)].



While the legislative history demonstrates that one of the targets of Congress in enacting this law was the infiltration of legitimate business by racketeers, it was, as indicated above, not its only concern. Because Congress intended to deal generally with organized crime's influence on the American economy, it gave a very broad meaning to the term "enterprise," which it defined to "include any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity." 18 U.S.C. §1961(4).

United States v. Parness, 503 F.2d 430,439 (2d Cir. 1974).

In reality, this issue has been decided by authorities which have held that the term is not limited to domestic corporations and encompasses illegitimate as well as legitimate enterprises or business. United States v. Parness, *supra*; United States v. Cappetto, 502 F.2d 1351 (7th Cir. 1974).

In the latter case the court found §1962 to be applicable to the gaining control of an illegal gambling enterprise in the following language:

"There is nothing in the language of subsection (b) or (c) or in the definition section of the Act, Section 1961, to suggest that the enterprise must be a legitimate one." Id. at 1358.

Accordingly, we conclude that the enterprise need not be a legitimate one to fall within the ambit of §1962(c).

Nor do we find any merit in defendants' argument that the statute, as construed above, is unconstitutionally vague, in that it does not give adequate and fair warning that illegitimate as well as legitimate enterprises are covered by it. The test of constitutionality for vagueness is not whether there are marginal cases in which its clarity may be in doubt but whether it conveys an adequate warning in a specific situation. Williams v. United States, 341 U.S. 97,104 (1951); United States v. Petrillo, 332 U.S. 1 (1947); United States v. Parness, supra, at 442. It is clear to us that the statute's language is not vague in including not only legitimate business but also illegitimate business. United State v. Cappetto, supra.

## II

Defendants also move, pursuant to Rule 14 of the Federal Rules of Criminal Procedure, for severance of counts three through fourteen. The indictment charges Paul Castellano (counts 3 through 6), Paul F. Castellano (counts 7 and 8), and Scarpulla (counts 9 and 10) with income tax



fraud. In addition, Paul F. Castellano is charged in count eleven with obstruction of justice by attempting to influence a witness before the grand jury, and defendants Herko (count 12), Granato (count 13) and Li Pari (count 14) are charged with perjury before the grand jury. The disposition of this motion is within the discretion of the trial court, to be determined upon a balancing of interests to avoid multiple litigation on the one hand, and to afford the defendants a fair trial on the other hand. Schaffer v. United States, 362 U.S. 511, rehearing denied, 363 U.S. 858 (1960); United States v. Shuford, 454 F.2d 772 (4th Cir. 1971); Parker v. United States, 404 F.2d 1193 (9th Cir. 1968), cert. denied, 394 U.S. 1004 (1969); 8 Moore's Federal Practice-Criminal Rules ¶14.02[1] (1975).

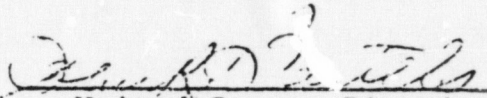
In balancing these interests, we conclude that all of the income tax fraud counts (3 through 10) must be severed and tried together with each other but separate from the other counts of the indictment. In using the same test, however, we find that the obstruction of justice and perjury counts (11 through 14) should not be severed. These counts all involve grand jury testimony concerning the illegal enterprise which forms the predicate of the first two counts

of the indictment alleging violations of 18 U.S.C. §1962 and accordingly are sufficiently related thereto. Therefore, counts 11 through 14 should be tried with counts 1 and 2.

Accordingly, defendants' motions are granted to permit severance of counts 3 through 10 from the rest of the indictment, and otherwise are denied.

SO ORDERED.

Dated: Brooklyn, N.Y.,  
November 11, 1975.

  
United States District Judge



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----x  
UNITED STATES OF AMERICA :

-against- :

PAUL CASTELLANO, a/k/a "Big Paul", :  
PAUL F. CASTELLANO, a/k/a "Little Paul", :  
ANGELO SCARPULLA, :  
FRANK GUGLIELMINI, :  
JOSEPH CASTELLANO, :  
FRANK GRANATO, :  
ROBERT HEPKO, :  
VICTOR LI PARI and :  
ROBERT DE PRIZIO, :

75-CR-521

Defendants. :

-----x  
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BARTELS, District Judge

This is a motion to reargue a motion to dismiss two counts of an indictment against the defendants for violation of Section 1962 of Title 18 of the United States Code. The offenses alleged are the conduct of the affairs of an enterprise, whose only business was the loaning of money at usurious interest rates, through the collection of an unlawful debt and conspiracy to accomplish the same. The basis for the motion is that such activities do not constitute a violation of that section since the enterprise was solely engaged in "illegitimate" activities. It is necessary to again refer to the language of the section, reading as follows:

"It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt."

The issue turns on whether the word "enterprise" in the statute is limited to "legitimate enterprises" or also includes "illegitimate enterprises." On November 11, 1975, this Court denied the defendants' original motion, reasoning

that Section 1962 included illegitimate as well as legitimate enterprises and, as so construed, was not unconstitutional. Prior thereto, on October 8, 1975, unknown to this Court, Judge Neuman of the District of Connecticut reached a contrary interpretation, United States v. Moeller, Crim. No. N-75-59, D. Conn., Oct. 7, 1975, and subsequent thereto, on November 26, 1975, Judge Mishler of this Court also reached a contrary decision for practically the same reasons stated by Judge Neuman, United States v. Altese, Crim. No. 75-CR-341, E.D.N.Y., Nov. 26, 1975. It is these two conflicting opinions which have triggered the motion to reargue.

We gather that the reasons for these different interpretations of Section 1962 are predicated upon the following: (i) reference in the House and Senate Reports to infiltration of racketeering money into legitimate business; (ii) potential prosecution of illegitimate enterprises under other more specific federal criminal statutes, such as 18 U.S.C. §§1955 and 892, and also under state criminal statutes; (iii) disturbance of the delicate federal and state relationships by prosecution of these activities under federal statutes instead of state statutes; (iv) necessity for leniency in interpretation of penal statutes; and finally,



(v) the erroneous nature of the opinion in United States v. Cappelto, 502 F.2d 1351 (7th Cir. 1974), resulting from the Court's reliance upon the legislative history of 18 U.S.C. §1955 instead of 18 U.S.C. §1962. We are not persuaded by any of these reasons.

To begin with, we believe that the express words of the statute must govern unless there is a clear contrary intent manifested in the House and Senate Reports. If Congress wished to restrict the word "enterprise" to "legitimate enterprise" in the statute, it knew how to do so by simply adding the word "legitimate" in front of the word "enterprise." This is particularly true since there was so much discussion in these Reports concerning the infiltration of racketeering funds into legitimate business. But it did not do so. While it is true that these Reports indicate that the primary purpose of Section 1962 was to prevent the infiltration of racketeering funds into legitimate business, there is nothing in these Reports or the legislative history of the statute which indicates that this purpose was the sole purpose of Section 1962. The word "enterprise" is clear and it has no adjective to limit it to "legitimate" enterprise, and we believe we have no

*purpose*

authority to engraft such an adjective as a modifier of the word "enterprise."<sup>1/</sup> We also believe that in cases of this kind the proper principle to be followed in construing the statute is set forth in United States v. Brown, 333 U.S. 18, 25-26 (1948), where the Court said:

"The canon in favor of strict construction [of criminal statutes] is not an inexorable command to override common sense and evident statutory purpose. ... Nor does it demand that a statute be given the 'narrowest meaning'; it is satisfied if the words are given their fair meaning in accord with the manifest intent of the lawmakers."

The language of Section 1962 prohibits the acquisition, infiltration or conduct of any enterprise by way of a pattern of racketeering or the collection of an unlawful debt. It has a double barrel effect, in that it prohibits the infiltration of racketeering funds into both legitimate and illegitimate businesses. Neither Section 892 nor Section 1955<sup>2/</sup> is concerned with the source of the money used for the purpose of either gambling or loan sharking, as does Section 1962. It consequently seems irrelevant to argue that the Government could have prosecuted the defendants under Section 892 for extortionate credit transactions since that Section is not aimed at the same transaction and, moreover,



requires the use or threatened use of violence or other criminal means for debt collection. Similarly, it is irrelevant to argue that 18 U.S.C. §1955(a), which prohibits illegal gambling business and is limited to five or more persons and a continuing operation for more than thirty days, could be circumvented by interpreting Section 1962 to include infiltration into illegitimate as well as legitimate enterprises. Other differences in the comparable statutes appear in the penalty provisions as follows: Section 1962: 20 years and/or \$25,000 plus forfeiture of interest gained; Section 1955: 5 years and/or \$20,000; Section 892: 20 years and/or \$10,000. Moreover, there are numerous instances where federal criminal statutes either by intent or accident have prohibited part or almost all of the same activity<sup>3/</sup> and it has long been recognized that Congress has the power to prohibit activities made unlawful by state law which take place in or in any way affect interstate commerce without disturbing the delicate state and federal relationships.

Nor do we believe that the distinguished panel in Cappetto erred in its decision or in its reference to the language of the Senate Report pertaining to Title VIII of the Organized Crime Control Act, 18 U.S.C. §1955. In fact,

reference to that section was unnecessary to the decision. That case involved the use of racketeering funds for the maintenance of an illegal gambling business proscribed by Section 1955. There is no question that illegal gambling business was included in the category of "racketeering activity," which was prohibited by Section 1955. The Court specifically referred to Section 1962(c) as forbidding participation in the affairs of such gambling business through a pattern of racketeering activity. It then referred to the fact that the word "enterprise" had been used not only in the language of Section 1962(c) but also in that particular portion of the Senate Report referring to Section 1955 where the Senate stated that the purpose of the statute was not only to deny the use of interstate commerce to the day-to-day operations of illegal gamblers "but also to prohibit directly substantial business enterprises of gambling ... ." (Emphasis added). Obviously, it was appropriate to note that the Senate had used the word "enterprises" in referring to the illegitimate business of gambling, thus permitting an interpretation that the use of the word "enterprise" in Section 1962 could refer to illegitimate as well as legitimate enterprises. Accordingly, we shall

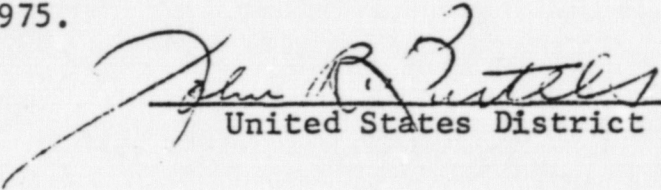


continue to follow the authority of the Cappetto court.

The motion to reargue is granted and upon reargument  
the original denial is adhered to.

SO ORDERED.

Dated: Brooklyn, N.Y.,  
December 30, 1975.

  
United States District Judge

#### FOOTNOTES

1/ The word "legitimate" is a slippery term and raises the question of what is and what is not legitimate. We are confident that Congress never intended to permit the use of racketeering funds for what is generally viewed as illegitimate activities but not necessarily illegal in every part of the United States, such as legalized gambling in Nevada or transactions generally deemed usurious in most states but either legitimized or not criminally penalized in other states.

2/ Section 892 of Title 18 of the United States Code provides:

"(a) Whoever makes any extortionate extension of credit, or conspires to do so, shall be fined not more than \$10,000 or imprisoned not more than 20 years, or both.

(b) In any prosecution under this section, if it is shown that all of the following factors were present in connection with the extension of credit in question, there is prima facie evidence that the extension of credit was extortionate, but this subsection is non-exclusive and in no way limits the effect or applicability of subsection (a):

(1) The repayment of the extension of credit, or the performance of any promise given in consideration thereof, would be unenforceable, through civil judicial processes against the debtor

(A) in the jurisdiction within which the debtor, if a natural person, resided or

(B) in every jurisdiction within which the debtor, if other than a natural person, was incorporated or qualified to do business

at the time the extension of credit was made.



FOOTNOTES - page 2

(2) The extension of credit was made at a rate of interest in excess of an annual rate of 45 per centum calculated according to the actuarial method of allocating payments made on a debt between principal and interest, pursuant to which a payment is applied first to the accumulated interest and the balance is applied to the unpaid principal.

(3) At the time the extension of credit was made, the debtor reasonably believed that either

(A) one or more extensions of credit by the creditor had been collected or attempted to be collected by extortionate means, or the nonrepayment thereof had been punished by extortionate means; or

(B) the creditor had a reputation for the use of extortionate means to collect extensions of credit or to punish the nonrepayment thereof.

(4) Upon the making of the extension of credit, the total of the extensions of credit by the creditor to the debtor then outstanding, including any unpaid interest or similar charges, exceeded \$100.

(c) In any prosecution under this section, if evidence has been introduced tending to show the existence of any of the circumstances described in subsection (b) (1) or (b) (2), and direct evidence of the actual belief of the debtor as to the creditor's collection practices is not available, then for the purpose of showing the understanding of the debtor and the creditor at the time the extension of credit was made, the court may in its discretion allow evidence to be introduced tending to show the reputation as to collection practices of the creditor in any community of which the debtor was a member at the time of the extension."

See 18 U.S.C. §891 for definition of "extortionate extension of credit."

FOOTNOTES - page 3

Section 1955 of Title 18 of the United States Code provides:

"(a) Whoever conducts, finances, manages, supervises, directs, or owns all or part of an illegal gambling business shall be fined not more than \$20,000 or imprisoned not more than five years, or both.

(b) As used in this section—

(1) 'illegal gambling business' means a gambling business which—

(i) is a violation of the law of a State or political subdivision in which it is conducted;

(ii) involves five or more persons who conduct, finance, manage, supervise, direct, or own all or part of such business; and

(iii) has been or remains in substantially continuous operation for a period in excess of thirty days or has a gross revenue of \$2,000 in any single day.

(2) 'gambling' includes but is not limited to pool-selling, bookmaking, maintaining slot machines, roulette wheels or dice tables, and conducting lotteries, policy, bolita or numbers games, or selling chances therein.

(3) 'State' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.



FOOTNOTES - page 4

(c) If five or more persons conduct, finance, manage, supervise, direct, or own all or part of a gambling business and such business operates for two or more successive days, then, for the purpose of obtaining warrants for arrests, interceptions, and other searches and seizures, probable cause that the business receives gross revenue in excess of \$2,000 in any single day shall be deemed to have been established.

(d) Any property, including money, used in violation of the provisions of this section may be seized and forfeited to the United States. All provisions of law relating to the seizure, summary, and judicial forfeiture procedures, and condemnation of vessels, vehicles, merchandise, and baggage for violation of the customs laws; the disposition of such vessels, vehicles, merchandise, and baggage or the proceeds from such sale; the remission or mitigation of such forfeitures; and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to seizures and forfeitures incurred or alleged to have been incurred under the provisions of this section, insofar as applicable and not inconsistent with such provisions. Such duties as are imposed upon the collector of customs or any other person in respect to the seizure and forfeiture of vessels, vehicles, merchandise, and baggage under the customs laws shall be performed with respect to seizures and forfeitures of property used or intended for use in violation of this section by such officers, agents, or other persons as may be designated for that purpose by the Attorney General.

(e) This section shall not apply to any bingo game, lottery, or similar game of chance conducted by an organization exempt from tax under paragraph (3) of subsection (c) of section 501 of the Internal Revenue Code of 1954, as amended, if no part of the gross receipts derived from such activity inures to

FOOTNOTES - page 5

the benefit of any private shareholder, member, or employee of such organization except as compensation for actual expenses incurred by him in the conduct of such activity."

- 3/ For example, compare 18 U.S.C. §111 (assaulting a federal officer) to 18 U.S.C. §2114 (assaulting a postal officer); 18 U.S.C. §§1621 and 1623 (perjury) to 18 U.S.C. §1001 (false statement); 18 U.S.C. §371 (general conspiracy) to 21 U.S.C. §846 (narcotics conspiracy); 18 U.S.C. §1701 (obstruction of mail) to 18 U.S.C. §1703 (delay of mail).



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
UNITED STATES OF AMERICA

-v-

FRANK ALTESE, ET AL

DEFENDANTS  
-----X

NOTICE OF APPEAL

75 CR 341

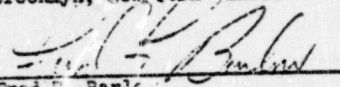
SIRS:

PLEASE TAKE NOTICE that the UNITED STATES OF AMERICA hereby appeals to the United States Court of Appeals for the Second Circuit from the order of the District Court (Mishler, Chief United States District Judge, Eastern District of New York), entered on November 26, 1975, dismissing Counts One and Two of the indictment in this case.

Dated: Brooklyn, New York  
December 22, 1975

Yours, etc.,

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By:   
Fred F. Barlow  
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U.S. Department of Justice

TO: CLERK  
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Defense Counsel named in  
the attached list

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the foregoing Brief of Appellant and Appendix have this day been mailed to counsel for the Appellees at the following addresses:

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